



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2005

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2005-00882

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217660.

The City of Houston (the "city") received a request for information regarding federal lawsuits filed against the city and certain correspondence exchanged between the city and the Texas Workforce Commission. You state that some responsive information will be released to the requestor but claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that is made confidential by other statutes, including section 143.1214 of the Local Government Code. Section 143.1214 provides in part:

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<sup>1</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to disciplinary action against a fire fighter or police officer to the director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov't Code § 143.1214(b)-(c). You inform us that the information in Exhibit 3 pertains to an investigation of an allegation of misconduct that resulted in disciplinary action. You state that the information in Exhibit 3 is maintained in files created by the department for its own use and is not held in personnel files maintained under section 143.089(a) of the Local Government Code. You also state that the department has forwarded documents regarding the investigation in Exhibit 3 that meet the requirements of section 143.1214(c) to the officer's personnel file maintained under section 143.089(a). Based on your representations and our review, we conclude that the information in Exhibit 3 is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. *See also* Open Records Decision No. 642 (1996) (concluding that files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under Loc. Gov't Code § 143.1214).

We now turn to your arguments regarding the information in Exhibit 4. Section 552.101 also encompasses information protected by the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the document in Exhibit 4 that constitutes a medical record that may only be released in accordance with the MPA.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Upon review of the information in Exhibit 4, we find that, even if this information could be considered highly intimate or embarrassing, it is of legitimate public concern. *See* Open Records Decision No. 438 (1986); *see also* Open Records Decision Nos. 444 (1986) (concluding that public has obvious interest in having access to information concerning performances of governmental employees, particularly employees who hold positions as sensitive as those held by members of law enforcement), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2-3 (1983) (public has interest in workplace conduct of public employee), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom not protected under statutory predecessor to

section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common law right of privacy). Accordingly, you may not withhold any of the information in Exhibit 4 under section 552.101 of the Government Code in conjunction with common law privacy.

You also assert section 552.117 of the Government Code as an exception to disclosure for information in Exhibits 3a and 4. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold the above-listed information under section 552.117(a)(1) on behalf of former officials or employees, including not currently licensed former peace officers, who made a request for confidentiality under section 552.024 prior to the date on which the city received the instant request. We have marked information in Exhibits 3a and 4 that must be withheld if these former employees made timely elections under section 552.024. The city may not withhold this information under section 552.117(a)(1) if these former employees did not make timely elections to keep this information confidential. We note, however, that Exhibit 3a pertains to a former city police officer. Pursuant to section 552.117(a)(2), if this former officer was a licensed peace officer at the time this request was received, then the marked information must be withheld regardless of whether he made a timely election under section 552.024.

We also note that even if the former employees at issue did not make timely elections to keep their social security numbers confidential under section 552.024, the city may be required to withhold their social security numbers under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the submitted information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the information in Exhibit 3 is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The report we have marked in Exhibit 4 may only be released in

accordance with the MPA. The marked home address and social security numbers in Exhibits 3a and 4 must be withheld under section 552.117(a)(1) of the Government Code if the former employees to whom this information pertains made timely elections to keep this information confidential under section 552.024 of the Government Code. If these former employees did not make timely elections, then this information may not be withheld under section 552.117(a)(1) of the Government Code. However, if the former officer in Exhibit 3a was a licensed peace officer at the time this request was received, then, pursuant to section 552.117(a)(2), his social security number is confidential regardless of whether he made a timely election under section 552.024. Social security numbers may also be confidential under federal law. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

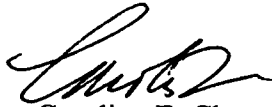
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 217660

Enc. Submitted documents

c: Mr. Darrell Scott  
8601 Broadway Boulevard #1275  
Houston, Texas 77061  
(w/o enclosures)